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Attorney for Secured Creditor
MCLP Asset Company, Inc., its successors and/or assignees

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re:) CASE NO.: 23-50023
Y. Roger Yu aka Yintao Yu)
Debtor.) CHAPTER 13
) **OBJECTION TO CHAPTER 13**
) **PLAN**
)
) **341(a) Meeting of Creditors:**
) Date: 02/27/2023
) Time: 9:30 am
) Place: Tele/Videoconference
)
)
) **Confirmation Hearing:**
) Date: 03/16/2023
) Time: 1:30 pm
) Ctrm: 11
) Place: in/via San Jose Courtroom 11 –
) Hammond
)
) Judge: M. Elaine Hammond

1 TO ALL PARTIES IN INTEREST AND TO THEIR ATTORNEYS OF RECORD:

2 MCLP Asset Company, Inc., its successors and/or assignees (“Secured Creditor”) in
3 the above-entitled Bankruptcy proceeding, hereby submits the following Objections to
4 Confirmation of the Chapter 13 Plan proposed by (“Debtor”) Y. Roger Yu.

5 Secured Creditor is entitled to receive payments pursuant to a Promissory Note which
6 matures on November 1, 2045 and is secured by a Deed of Trust on the subject property
7 commonly known as 36500 Alder Court, Fremont, CA 94536. As of January 11, 2023, the
8 approximate amount in default was \$68,347.51, as will be described in a Proof of Claim; Secured
9 Creditor files this Objection to protect its interests.

10 **ARGUMENT**

11 Under 11 U.S.C. §1325, the provisions for plan confirmation in a Chapter 13 have been
12 set. Unless otherwise ordered, under 11 U.S.C. § 1326(a)(1), the Debtor shall commence making
13 the payments proposed by the Plan within 30 days after the Petition is filed. The Plan must
14 comply with all applicable provisions of 11 U.S.C. § 1325 to be confirmed. Based on the
15 foregoing, as more fully detailed below, the Plan cannot be confirmed as proposed.

16 **A. IMPERMISSIBLY MODIFIES SECURED CREDITOR’S RIGHTS**

17 Under 11 U.S.C. §1322(b)(2), a Plan that modifies the rights of a creditor whose claim
18 is secured only by a security interest in real property that is debtor’s principal residence is
19 impermissible. The proposed Plan does not set forth a reasonable schedule and time period for
20 the payment of the arrearages owed to Secured Creditor. The payoff period and monthly
21 repayment amount proposed by the Debtor exceed a reasonable arrangement in light of Debtor’s
22 past non-payment history. Debtor alleges in the Plan that the arrears owed to Secured Creditor
23 are in the amount of \$57,267.00 while in fact the actual arrears owed are in the amount of
24 \$68,347.51. To cure the pre-petition arrearages of \$68,347.51 over the term of the Plan within
25 60 months, Secured Creditor must receive a minimum payment of \$1,139.13 per month from the
26 Debtor through the Plan. Debtor’s Plan provides for payments to the Trustee in the amount of
27 \$12,319.00 per month for 60 months. Debtor has not provided sufficient funds to cure the arrears
28 over the term of the Plan within 60 months.

1 Additionally, Secured Creditor's Loan for property located at 36500 Alder Court,
2 Fremont, CA 94536 is being treated in Chapter 13 Bankruptcy case 22-41315 in the Northern
3 District of California, filed by Brian Yu. Neither Debtor is the borrower. Presumptively, the
4 Debtors are heirs to the borrower as they share a last name. Irrespective of the title issues, the
5 two cases which propose to treat the same claim in their respective plans must be reconciled to
6 ensure that the default is cured without Secured Creditor receiving more than is appropriate to
7 the detriment of the other creditors. Therefore, the Plan is not feasible.

8 **B. THE PLAN IS NOT FEASIBLE – DEBTOR DOES NOT HAVE SUFFICIENT**
9 **INCOME**

10 Pursuant to Schedules I and J, Debtor has net income of \$12,930.00. It appears that
11 Debtor has sufficient net income to increase the plan payment to cure the arrears owed to
12 Secured Creditor. However, Schedule J does not include a line item for income tax. It is
13 unclear whether including a tax expense would cause the Debtor to have insufficient income to
14 increase the plan payment. Thus, the Plan cannot be confirmed as currently drafted.

15 **CONCLUSION**

16 Any Chapter 13 Plan proposed by the Debtor must provide for and eliminate the
17 Objections specified above in order to be reasonable and to comply with applicable provisions
18 of the Bankruptcy Code. Secured Creditor respectfully requests that confirmation of the Chapter
19 13 Plan as proposed by the Debtor be denied.

20 WHEREFORE, Secured Creditor prays as follows:

21 1. That confirmation of the Proposed Chapter 13 Plan be denied,
22 2. For attorneys' fees and costs herein, and
23 3. For such other relief as this Court deems proper.

25 Dated: February 23, 2023

26 PADGETT LAW GROUP

27 /s/ Kristin A. Zilberstein

28 Kristin A. Zilberstein, Esq.

29 Counsel for MCLP Asset Company, Inc., its
successors and/or assignees

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**CERTIFICATE OF SERVICE OF
OBJECTION TO CHAPTER 13
PLAN**

Honorable M. Elaine Hammond

CERTIFICATE OF SERVICE

On February 23, 2023, I served the foregoing documents described as OBJECTION TO CHAPTER 13 PLAN, on the following individuals by depositing true copies thereof in the United States first class mail at Tallahassee, FL, enclosed in a sealed envelope, with postage paid addressed as follows:

1 COUNSEL FOR DEBTOR
2 Arasto Farsad
3 Farsad Law Office, P.C.
4 1625 The Alameda, Suite 525
5 San Jose, CA 95126

6 TRUSTEE
7 Devin Derham-Burk
8 Chapter 13 Trustee
9 P.O. Box 50013
10 San Jose, CA 95150-0013

11 DEBTOR
12 Y. Roger Yu
13 115 College Ave
14 Mountain View, CA 94040

15 **I declare under penalty of perjury in the United States of America that the**
16 **foregoing is true and correct.**

17 /s/ Angelica D. Reyes
18 Angelica D. Reyes